APPENDIX.

The following material statutes were not included in the appendix to the petition for certiorari.

Interstate Commerce Act, Part 1, 24 Stat. 380, 41 Stat. 479, 49 U. S. C. 3 (1):

> "It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: **Provided, however,** That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Labor Management Relations Act of 1947, 49 Stat. 452, 61 Stat. 140, 65 Stat. 601, 29 U. S. C. 158 (b) (4):

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * * * *
>
> "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an

object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: **Provided**, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter."

SEP 28 1956

JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 328.

MEIER & POHLMANN FURNITURE COMPANY,
a Corporation,
Petitioner,

v.

HAROLD J. GIBBONS, Individually and as Officer, Agent and Member Representative of Warehouse & Distribution Workers Union, Local 688, A. F. L., Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., and All Other Members of Said Local Union, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

REPLY

Of Petitioner to Respondents' Opposition to Review by Certiorari.

FORDYCE, MAYNE, HARTMAN,
RENARD & STRIBLING,
WALTER R. MAYNE,
THOMAS ROWE SCHWARZ,
506 Olive Street,
St. Louis, Missouri,
Attorneys for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 1-4477.

INDEX.

Page

I.

The major legal premise of the Eighth Circuit concerning validity of picket line is erroneous 2

II.

The decision of the 8th Circuit in this case conflicts with the decision of the 7th Circuit in the case of Joliet Contractors Assn. v. NLRB, 202 F. (2) 606 (CA 7), as respects violation of 29 U. S. C. A., Sec. 187 (Sec. 158 B 4)..... 3

III.

The Eighth Circuit Court of Appeals holding that the Interstate Commerce Commission has approved impracticable operations tariff, printed opinion page 7, is erroneous and contrary to fact 8

Cases Cited.

Berger v. Gilliam, 271 Fed. 65 3

Chicago, B. & Q. Ry. Co. v. Burlington C. R. & N. Y. Ry. Co., 34 Fed. 481 3

Interstate Commerce Act, 49 U. S. C. A., Sec. 10 2

Joliet Contractors, etc., v. NLRB, 7th Circuit, 202 F. 2d 606 .....3, 4, 5, 6

Montgomery Ward & Co. v. Consolidated Freightways, Inc., 42 I. C. C. 225 (M. C. C.) 8

Montgomery Ward & Company v. Santa Fe Trail Corp., 42 I. C. C. 229 8

Motor Carriers Act, 49 U. S. C. A., Sec. 322 2

Pevely Dairy Company v. U. S. (8th Circuit), 178 F. (2) 363 2

Theatre Enterprises, Inc., v. Paramount Film Distributing Corporation, 346 U. S. 537, 74 S. Ct. 257, 98 L. Ed. 273 2

Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730 3

Statutes Cited.

Section 8 (b) (4) (A) of the LRMA 5

29 U. S. C. A., Sec. 187 ..... 3, 7

49 U. S. C. A., Sec. 1 et seq. 2

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 328.

MEIER & POHLMANN FURNITURE COMPANY,
a Corporation,
Petitioner,

v.

HAROLD J. GIBBONS, Individually and as Officer, Agent and Member Representative of Warehouse & Distribution Workers Union, Local 688, A. F. L., Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. L., and All Other Members of Said Local Union, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

REPLY

Of Petitioner to Respondents' Opposition to Review by Certiorari.

The Brief of respondents in opposition to review of the above styled cause by certiorari is predicated upon the assumption that such review of this case requires a review of the conclusions of fact of the trial court and the appellate court, upon which those courts predicated their finding that so conspiracy existed.

This is not the case. In ruling on the evidence to reach its conclusion that no conspiracy existed between the Labor Unions and the carriers, the Eighth Circuit Court

of Appeals applied the legal principles found in the cases of Theatre Enterprises, Inc., v. Paramount Film Distributing Corporation, 346 U. S. 537, 74 S. Ct. 257, 98 L. Ed. 273, and the case of Pevely Dairy Company v. U. S. (8th Circuit), 178 F. (2) 363.

These cases deal with situations in which similarity of conduct is offered to show the existence of a conspiratorial agreement which induced the conduct.

The application of these rules depends entirely for their validity upon the major legal premise of the Eighth Circuit Court of Appeals in this case, that the written labor contracts which contain picket line, hot cargo clauses and assignment of work clauses are not prohibited by the Motor Carriers Act and/or the Interstate Commerce Act and are not in themselves illegal (Printed Opinion, p. 5 et seq.). It is clear that if the demand for an execution of these contracts by the Unions constitutes an inducement to or aid and abetment or unjust discrimination in service within the meaning of the above acts, they then become by force of those acts illegal (49 U. S. C. A., sec. 1 et seq.) and the conjunction of the carriers to the contract constitutes them parties to a conspiracy. The premise of the Eighth Circuit Court of Appeals that these written contracts are not illegal, has been assumed by that Court without citation of authorities or independent discussion of the provisions of those acts.

I.

The Major Legal Premise of the 8th Circuit Concerning Validity of Picket Line Is Erroneous.

1. The Motor Carriers Act and the Interstate Commerce Act specifically prohibit the employees of carriers from inducing, aiding or abetting discrimination in service.

Interstate Commerce Act, 49 U. S. C. A., Sec. 10;
Motor Carriers Act, 49 U. S. C. A., Sec. 322.

2. The demand of all the employees for the right to refuse to serve picketed shippers (picketing line and hot cargo) and the right to prevent other employees from serving (assignment of work clauses) is an inducement to discrimination in violation of the Act, particularly where the demand originates under union rule enforceable through its disciplinary machinery.

Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730;

Chicago, B. & Q. Ry. Co. v. Burlington C. R. & N. Y. Ry. Co., 34 Fed. 481.

3. The agreement of the carriers to these demands constitutes the carrier parties to a conspiracy with the Union to discriminate the written agreements being in evidence.

Berger v. Gilliam, 271 Fed. 65;

Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., supra.

When the erroneous legal premises of the Court of Appeals is removed, it will be seen that the conspiracy is established through the written agreement without resort to extraneous evidence of similarity of conduct, and its opinion on the conspiracy issue fails entirely. See printed Opinion, pp. 5-9.

II.

The Decision of the 8th Circuit in This Case Conflicts with the Decision of the 7th Circuit in the Case of Joliet Contractors Assn. v. NLRB, 202 F. (2) 606 (CA 7), as Respects Violation of 29 U. S. C. A., Sec. 187 (Sec. 158 B 4).

On pages 15 and 16 of their Brief in Opposition, respondents attempt to distinguish the present case from that of Joliet Contractors, supra. We submit that the following analysis of the facts and holdings in the Joliet case and the present case strikingly demonstrate the con-

flict of the decisions with respect to the circumstances under which the provisions of Title 29 U. S. C. A., Sec. 158 (b) (4) and/or Sec. 187 are violated:

Joliet Contractors, etc., v. NLRB, 7th Circuit, 202 F. 2d 606.	**Meier Pohlman, 8th Circuit.**
1. The Union adopted as a policy the obligation that its members not work on preglazed sash (202 F. 2d 607).	1. The union adopts a policy that its membership refuse to cross picket. Union admission of fact. Plff. Ex. 27, Rec. p. 251 et seq.
2. The policy is embodied in Union By-Laws enforceable by union discipline (l. c. 202 F. 2d 611).	2. Violations of the policy are enforceable by union discipline. Union admission of fact. Plff. Ex. 27, Rec. p. 251 et seq.
3. The Union By-Laws by agreement part of the job condition working rules (l. c. 202 F. 2d 607).	3. The picket line policy is embodied in the contracts with carriers as part of the working agreement as a picket line clause. Testimony Morse, Rec. p. 159, and Contracts, Exs. 1A, 1B, 1D, Rec. pp. 219-229.
4. Grant Hardware incident. The union business agent, Meyers, addresses three glaziers working on preglazed sash and says, "You know the conditions of	4. The union "advises the membership in language sufficient to convey union desire not to handle plaintiff's goods." Pre-trial Order, Rec. p. 94, 1st para.[1]

[1] Pre-Trial Order, Rec. p. 94: "That during the course of the various meetings during which the union defendants have advised certain of their members that they need not pick up, deliver, handle, or work upon, or transport Meier-Pohlmann goods or materials, that it is a fact that the language used has been such as to convey to

Joliet Contractors, etc., v. NLRB, 7th Circuit, 202 F. 2d 606.	Meier Pohlman, 8th Circuit.
the job. Do what is right." The men discontinue working on the sash (l. c. 202 F. 2d 611).	
5. The Bockholdt incident. Two glaziers remove glass from preglazed sash without immediate interposition of either union or employer and refuse further work (l. c. 202 F. 2d 611).	5. The men discontinue all of handling plaintiff's goods on pick-up and delivery—Spring, 1953. Appellate Court Opinion, p. 2.[2]
6. The court holds that the existence of the union enforced policy is an inducement and encouragement within the meaning of Section 8 (b) (4) (A) of the LRMA and that when refusal of employees to work occurs, as in the incidents described in 4 and 5 above, the violation of the act by the union is complete (l. c. 202 F. 2d 611, 612).	6. The court holds that the existence of the policy and its incorporation into contract, together with the union advice to its membership to refuse to cross the picket line or handle plaintiff's goods and the refusal thereafter of service, does not constitute a violation of the act.

their members a desire on the part of the unions that they did not, under the circumstances mentioned, want their members to perform the services which the union had advised them they were excused from performing, but that no threats of discipline reprisals of any kind were made in that connection."

[2] Eighth Circuit Printed Opinion, p. 2: "After the institution of the strike at plaintiff's plant, it became increasingly difficult for plaintiff to get transportation service at its plant, particularly pick-up and delivery service. Such service tapered off until, in the spring of 1953, pick-up and delivery service became practically unavailable."

In the Joliet Contractors case, the 7th Circuit quite properly holds that the existence of union policy embodied within the By-Laws and enforceable within the union organization through its disciplinary machinery is, indeed, an inducement and encouragement to the membership to refuse work in circumstances coming in conflict with the established policy. The court points out that the inducement and encouragement does not complete the violation in and of itself, but that when men in concert refuse work without any further intervention by the union, when the conflict with the union policy arises, or when the union agents merely call attention to its well-known policies to men on the job, and those men then discontinue working, that the violation is complete.

The three elements of the violation are:

1. Union inducement of employees of secondary employer to,

2. A concerted refusal to work having

3. as an object the interruption of the business relationships existing between a secondary employer and a third party.

The adoption by the Union of the policy and its disciplinary enforcement are admitted. The incorporation of the picket line policy into the contracts is admitted. The advice given by the Union to the men to take advantage of the contract provisions is covered in the pre-trial order of the Court in the footnote, and the Union specifically admitted the use of language sufficient to convey Union desire in the matter. The men discontinued handling of plaintiff's goods. At this juncture we think it is important to call the Court's attention to page 18 of the printed opinion of the U. S. Court of Appeals for the 8th Circuit, and we quote the language:

"We can find no substantial evidence of concert of action by the unions[3] as charged. Rather the record shows a pattern of individual action and group action co-extensive with the employees of each carrier or carriers. This is reflected in the passage of several months before all carriers were failing to furnish the plaintiff pick-up and delivery service. It is further evident in the conduct of some carrier employees crossing the picket line."

We are at a loss to understand this concept and unable to interpret it. The Court finds that in the face of the conduct of the Union, group employee action co-extensive with the employees of each carrier or carriers occurred. This, indeed, is concert of action within the meaning of 29 U. S. C. A., Sec. 187. In any event, the refusals by the employees to handle delivery service to the plaintiff occurred at the carrier docks and as illustrated by the testimony of Hall, Record p. 119; Rodemeyer, Record p. 129; Dunne, Record p. 121, and Hayes, Record p. 126, embraced all the employees of each of the particular carrier-employer, and assuming that the language of the Union Agents, giving the advice to the membership was as limited as the stipulation, it was nonetheless addressed to the entire group, and, therefore, calculated to produce a concerted refusal. The fact that exceptions to the concert of action occurred does not change the connection of the union activity inasmuch as the union activity was addressed toward the group.

We submit, therefore, that each of the elements of the violation as set out in the Joliet case are present in the

---

[3] It was admitted that all the local unions, of the carrier employees involved, were in the spring of 1953 placed under the single trustee Thomas E. Flynn, International, and his successor Harold J. Gibbons and then merged into Local 600 (Plaintiff's Ex. 27, Rec. p. 251 et seq.). Thus conjunction of all unions, single direction and merger, are admitted.

Meier Pohlmann case and the decision of the two courts conflict, and the conflict should be resolved by view of this court.

III.

The Eighth Circuit Court of Appeals Holding That the Interstate Commerce Commission Has Approved Impracticable Operations Tariff, Printed Opinion Page 7, Is Erroneous and Contrary to Fact.

On page 7 of the printed Opinion of the Eighth Circuit Court of Appeals, it is stated that "the Interstate Commerce Commission approved an impracticable operations tariff of the type hereinbefore quoted, would seem to have some bearing on the reasonableness as a matter of public policy of permitting such a clause in a labor contract involving transportation." This statement is entirely contrary to fact.

The case of Montgomery Ward & Co. v. Consolidated Freightways, Inc., 42 I. C. C. 225 (M. C. C.), does not purport to approve the tariff referred to. In addition, that case itself specifically states that the Commission will not entertain the question of the legality of labor contracts such as are presented to the 8th Circuit for the reason of lack of jurisdiction. In addition, the companion case of Montgomery Ward & Company v. Santa Fe Trail Corp., 42 I. C. C. 229, reaches a contrary result on similar facts. However, the seriousness of the erroneous assumption of the Eighth Circuit becomes more apparent in view of the fact that there is now pending before the Interstate Commerce Commission, Investigation and Suspension Docket No. 6546, Pick-up and Delivery Restrictions—Union Pacific, in which the validity of the tariff is for the first time being specifically investigated and considered by the Interstate Commerce Commission. In view of this fact, it is clear

that the Eighth Circuit should at least have considered its interpretation of the tariff independently, and clearly to the extent that the Court's ruling was bottomed on its erroneous presumption of prior Commission action respecting the validity of the impracticable operations tariff its decision should be reversed.

Respectfully submitted,

FORDYCE, MAYNE, HARTMAN,
RENARD & STRIBLING,,
WALTER R. MAYNE,
THOMAS ROWE SCHWARZ,
Attorneys for Petitioner.